

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals	)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization	)	CC Docket No. 99-200
)	
Telephone Number Portability	)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

**COMMENTS OF
THE NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

TABLE OF CONTENTS

SUMMARY	i
---------------	---

COMMENTS

I.	THE REVENUE-BASED SYSTEM HAS WORKED WELL; MODIFICATION TO ADDRESS CURRENT ISSUES MAY BE PREFERABLE TO ABANDONMENT.....	2
II.	THE COMMISSION SHOULD ENSURE THAT ANY NEW ASSESSMENT MECHANISM IS ADMINISTRATIVELY WORKABLE, DOES NOT BURDEN END USERS, AND COMPLIES WITH SECTION 254(d) OF THE ACT.....	5
III.	CONCLUSION.....	11

Summary

The revenue-based assessment mechanism has worked well and should not be abandoned absent clear evidence that an alternative mechanism would be more sustainable over time. Given the importance of the universal service programs involved, the population of carriers affected, and the considerable sums at stake, the Commission should not discard the current program without thoroughly exploring potential “fixes” to the revenue-based system, such as revising the “safe harbor” reporting percentage for CMRS providers or expanding the base of contributors.

In the event the Commission determines that the current assessment mechanism cannot be modified, it should assure that any replacement method is administratively workable, does not unduly burden end users, and satisfies the requirements of section 254(d) of the Act. The Commission’s proposed connection-based mechanism would increase monthly charges for many residential rural customers, especially low-volume callers.

The proposed connection-based method would also exempt a significant number of carriers from contributing simply because they do not provide direct connections to the network, raising significant questions about compliance with section 254(d)’s mandate that “every” carrier contribute to universal service. The proposed system would also dramatically shift responsibility for interstate universal service programs from interexchange carriers, the largest providers of interstate services, to carriers that are much smaller providers of interstate services. These concerns will almost certainly cause parties to challenge the Commission’s new system in court, creating additional

uncertainty about universal service funding and potentially jeopardizing the flow of funds. These risks could perhaps be ameliorated by requiring IXCs to contribute to the system based on presubscribed lines.

The Commission's proposal to base the residual multi-line business assessment on maximum capacity of the connections may raise difficult administrative issues that may far exceed the problems the Commission has identified with a revenue-based assessment mechanism. Before determining that a replacement mechanism is administratively workable and not overly burdensome, the Commission needs to ensure that any proposed assessment mechanism can equitably handle both evolving technologies and alternative technology platforms.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service)	
)	
1998 Biennial Regulatory Review –	)	CC Docket No. 98-171
Streamlined Contributor Reporting)	
Requirements Associated with Administration)	
of Telecommunications Relay Service, North)	
American Numbering Plan, Local Number)	
Portability, and Universal Service Support)	
Mechanisms)	
)	
Telecommunications Services for Individuals	)	CC Docket No. 90-571
with Hearing and Speech Disabilities, and the)	
Americans with Disabilities Act of 1990)	
)	
Administration of the North American	)	CC Docket No. 92-237
Numbering Plan and North American	)	NSD File No. L-00-72
Numbering Plan Cost Recovery Contribution)	
Factor and Fund Size)	
)	
Number Resource Optimization	)	CC Docket No. 99-200
)	
Telephone Number Portability	)	CC Docket No. 95-116
)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

**COMMENTS OF THE
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.**

The National Exchange Carrier Association, Inc. (NECA) submits these comments in response to the Commission's *Further Notice of Proposed Rulemaking (FNPRM)* in the above-captioned proceeding.¹

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, 1998 Biennial Regulatory Review - Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Service, North American Numbering Plan,

I. THE REVENUE-BASED SYSTEM HAS WORKED WELL; MODIFICATION TO ADDRESS CURRENT ISSUES MAY BE PREFERABLE TO ABANDONMENT.

The *FNPRM* expresses concern that changes in the telecommunications marketplace may threaten the long-term stability of the Commission's universal service fund (USF) program, which currently allocates payment responsibility among interstate carriers on the basis of historical interstate end-user revenues. Specific issues include a decline in interexchange carriers' share of interstate end-user revenues, allocation distortions caused by the "lag" between historical revenues and assessments, growth in mobile interstate traffic without concomitant growth in interstate revenues reported by Commercial Mobile Radio Service (CMRS) providers, and difficulties associated with determining interstate revenue percentages when carriers "bundle" interstate telecommunications services with local services and/or non-regulated products and services.²

As a replacement for the current revenues-based USF contribution mechanism, the Commission proposes that local exchange carriers, interexchange carriers, and CMRS providers contribute to universal service based on the number and capacity of end-user

Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size, CC Docket No. 92-237, NSD File No. L-00-72, Number Resource Optimization, CC Docket No. 99-200, Telephone Number Portability, CC Docket No. 95-116, *Further Notice of Proposed Rulemaking*, 67 Fed. Reg. 11268 (2002)(*FNPRM*).

² See generally *FNPRM* at ¶¶ 7-13.

connections they provide to a public network.³ The *FNPRM* seeks comment on the merits of such a system, and in particular, whether such an assessment mechanism would be consistent with section 254(d) of the Act.⁴

The concerns mentioned in the *FNPRM*, while significant, may not warrant abandoning the current revenue-based assessment mechanism absent clear evidence that an alternative approach would be more sustainable over time. Instituted in 1998, the revenue-based mechanism has proven to be remarkably effective and efficient. Each year, over 2100 carriers⁵ contribute a total of \$5.5 billion⁶ to federal universal service programs on the basis of their respective shares of interstate end-user revenues, with comparatively little controversy or disputes. Given the importance of the programs involved, the population of carriers affected, and the considerable sums at stake, the Commission should not discard the current program without thoroughly exploring potential “fixes” to the revenue-based system.

For example, several concerns identified in the *FNPRM* may be addressed by revising current revenue reporting rules. If the interstate revenue base is eroding because usage is shifting from traditional interexchange carrier services to CMRS “one rate” plans, the obvious solution to consider would be to revise the current “safe harbor” reporting percentage for interstate CMRS revenues. As numerous commenters pointed

³ *Id.* at ¶ 36.

⁴ 47 U.S.C. §254(d).

⁵ See Telecommunications Provider Locator, Industry Analysis Division, Table 2, (rel. Nov. 2001) (*Carrier Locator Report*).

⁶ See FCC, Common Carrier Bureau, Industry Analysis Division, *Universal Service Monitoring Report*, CC Docket No. 98-202 (Oct. 2001) (*Monitoring Report*).

out in earlier phases of this proceeding, the current reporting percentage for CMRS carriers appears to be substantially understated and is long overdue for review and revision.⁷

The provision of interstate and intrastate services on a “bundled” basis admittedly presents challenges for a system based on interstate end-user revenues. Yet, the Commission has dealt successfully with more formidable jurisdictional and accounting issues than this without abandoning otherwise workable regulatory systems.⁸ To the extent that erosion of the interstate revenue base is attributable to shifts in usage from traditional telecommunications services to new services such as voice-over-Internet protocol, the obvious solution would be to broaden the base of contributors to include such new service providers.

⁷ Similarly, the Commission can perhaps resolve problems associated with the “lag” between the times that historical revenues are earned and reported by adjusting reporting intervals. *See, e.g.*, Federal-State Joint Board on Universal Service, Petition for Reconsideration filed by AT&T, CC Docket No. 96-45, *Report and Order and Order on Reconsideration*, 16 FCC Rcd 5748 (2001).

⁸ *See* Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61, Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 98-183, 1998 Biennial Regulatory Review -- Review of Customer Premises Equipment And Enhanced Services Unbundling Rules In the Interexchange, Exchange Access And Local Exchange Markets, *Report and Order*, 16 FCC Rcd 7418 (2001) at ¶¶ 50-51. The Commission suggested two methods for contributors to use to allocate revenue when telecommunications services and CPE/enhanced services are offered as a bundled package, either based on unbundled service offering prices with no discount from the bundled offering being allocated to telecommunications services or by treating all bundled revenues as telecommunications services revenue for purposes of determining universal service obligations. *See also* Jurisdictional Separations Reform and Referral to the Federal-State Joint Board, CC Docket No. 80-286, *Report and Order*, 16 FCC Rcd 11382 (2001) (*Report and Order*) in which the Commission placed an interim freeze on Part 36 jurisdictional separations rules in order to stabilize and simplify the separations process while continuing to work on more comprehensive separations reform.

The Commission also needs to consider the potential impact that the proposed shift in contribution assessment mechanisms is likely to have on carriers and their customers, and the significant legal risks and practical complications associated with the proposed connection-based mechanism (discussed below). It would be unfortunate if perceived administrative difficulties with the current system led the Commission to replace a workable system with one that causes even greater administrative difficulties down the road.

II. THE COMMISSION SHOULD ENSURE THAT ANY NEW ASSESSMENT MECHANISM IS ADMINISTRATIVELY WORKABLE, DOES NOT BURDEN END USERS, AND COMPLIES WITH SECTION 254(d) OF THE ACT.

Existing high-cost and low-income universal service programs are designed to assure that affordable telephone service is available to all Americans. It would be counterproductive for the Commission to adopt a contribution scheme that overburdens the very customers the system is designed to help.

Only last year a universal service contribution charge was imposed on the customers of non-*de minimis* rural telephone companies. Many of these customers make few – or no – long distance calls per month and thus, at the current NECA rate of \$0.37 per month, pay far less than the “average” USF contribution level of \$1.93 assumed in the *FNPRM*’s analysis of customer billings.⁹ An increase in this new charge to \$1 would occur at the same time as increases in subscriber line charges resulting from the Commission’s MAG Order, as well as new Commission-mandated end-user charges to cover local number portability costs.

⁹ See *FNPRM* at ¶ 46.

The cumulative effect of increases in monthly charges for residential rural customers cannot be ignored. The effects of the Commission's decisions on multi-line business customers and advanced services customers in these areas are even greater.

The proposed connection-based method, moreover, is likely to be challenged in the courts, creating uncertainty about universal service funding and potentially jeopardizing the flow of funds. As the *FNPRM* recognizes, section 254(d) of the Act requires that “[e]very telecommunications carrier that provides interstate telecommunications service”¹⁰ must contribute on an equitable and nondiscriminatory basis to the Commission's universal service mechanisms. Although the *FNPRM* asserts that the “vast majority” of telecommunications carriers that provide interstate telecommunications service also provide connections to the public network,¹¹ it also recognizes that a significant number of carriers would be exempt from contributing to federal universal service mechanisms under the connection-based system.

These providers include pure resellers, operator service providers, prepaid calling card providers, and dial-around providers. Based on information contained in the Commission's *Carrier Locator Report*, over 1500 carriers fall into these categories. Although most are *de minimis* and do not currently contribute to the fund, about 300 do contribute. Thus, the Commission's proposal would have the effect of exempting about

¹⁰ The Act defines “telecommunications service” as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. § 3(46).

¹¹ The Commission notes that it has previously concluded that providers of connections to the public switched network are providers of interstate telecommunications services because end-user connections to the public switched network have an interstate component. See *FNPRM* at ¶65.

15% of the approximately 2100 carriers that currently contribute to the fund. Since carriers will have considerable incentives under the new method to reconfigure their services so as to avoid or minimize the number of connections provided to customers, this percentage is likely to increase in the future, a phenomenon that would lead to exactly the same erosion problem affecting the current revenue-based mechanism.

The Commission asks whether the Act's requirement that "every" carrier contribute could be met by subjecting non-connection based carriers to a minimum contribution requirement, or perhaps by creatively revising the *de minimis* exemption¹² to include non-connection based carriers.¹³ The problem with a minimum contribution requirement is that non-connection-based carriers may vary widely in their size, network usage levels and revenues. It would obviously be unfair to assess a carrier with \$10,000 in revenues the same amount as a carrier with \$10,000,000 in revenues, yet this result is precisely what would occur if a minimum charge is assessed simply on the basis of whether or not a given carrier provides connections to the network. Similarly, there appears to be no justification for exempting all carriers, regardless of size, as *de minimis* simply because they do not provide direct connections to the network.¹⁴

¹² Section 254(d) allows the Commission to exempt a carrier or class of carriers from the requirement to contribute to universal service funding if the carrier's telecommunications activities are limited to such an extent that the level of the carrier's contributions would be *de minimis*.

¹³ See *FNPRM* at ¶ 66.

¹⁴ The *FNPRM* also requests comment on whether a *de minimis* exemption should be applied under a connection-based system. See *FNPRM* at ¶ 68. It is not clear how such a mechanism would work, yet, it should be noted that there are about 1700 connection-based carriers that are considered *de minimis* under current rules. See *Carrier Locator Report*, Table 3. A connection-based system without a *de minimis* exemption level

In addition to requiring that every carrier contribute, the Act also requires that the contribution system allocate responsibility in an “equitable and nondiscriminatory” manner. The proposed connection-based system would dramatically shift responsibility for interstate universal service programs from interexchange carriers (IXCs), the largest providers of interstate services, to carriers that are much smaller providers of interstate services.¹⁵

The Commission implies that it is really the customer who pays for universal service contributions, and that since most customers use both local and long distance services, it doesn’t matter whether local exchange carriers (LECs) or IXCs bear the burden of contributing to universal service programs.¹⁶ As noted above, however, assertions that the average household would pay approximately the same in contribution recovery fees ignore the impact of this proposal on low-volume customers, who would see significant increases as a result of moving to a connection-based system. In any event, section 254(d) requires that *carriers*, not customers, contribute to universal service in an equitable and non-discriminatory fashion.

would thus greatly increase the number of small carriers that are required to contribute to the fund, thereby substantially increasing the administrative costs of the program.

¹⁵ As the *FNPRM* acknowledges, IXCs would contribute under a connection-based only on the basis of special access connections and to the extent that they may also serve as competitive local exchange carriers (CLECs). See *FNPRM* at ¶ 66. According to the Commission, the contribution breakdown for 3Q01 was IXCs 63%, LECs 23%, and CMRS providers 14%. Commission staff estimates that its connection-based proposal would increase the CMRS contribution to 24%, with the 76% balance attributable to LECs and IXCs. *Id.* at ¶ 59. Although the Commission does not provide an estimate of the breakdown between LECs and IXCs, it is clear that LECs would be responsible for the majority of the contribution, since IXCs would be obligated to contribute only to the extent that they provide end-user connections.

¹⁶ See *FNPRM* at ¶ 46.

One way to avoid shifting the burden among groups of contributors would be to require IXC's, at a minimum, to contribute to the system based on presubscribed lines (PSL's). Based on experience administering the presubscribed line system in effect prior to January 1, 1998, NECA had previously warned of the administrative burdens associated with resolving the "whose line is it" problem resulting from disputes between IXC's and LEC's reporting different presubscribed line counts.¹⁷ Should the Commission decide to implement a connection-based system including PSL's, NECA suggests that the Commission rely on a self-reporting approach for determining line counts. This would avoid difficulties associated with resolving discrepancies between conflicting sources of information.

Finally, the Commission should assure that any replacement mechanism for the current revenue-based system is administratively workable. The Commission's proposal to base the residual multi-line business assessment on the maximum capacity of the connections¹⁸ may raise difficult administrative issues. The Commission proposes that using bandwidth instead of lines would avoid the need to establish voice-grade equivalency ratios for these connections.¹⁹ The Commission also suggests that assessing multi-line business connections on a capacity basis is appropriate because multi-line business connections typically provide significantly higher bandwidths than connections

¹⁷ See NECA Comments filed June 25, 2001 at p. 4.

¹⁸ See *FNPRM* at ¶ 35.

¹⁹ See *FNPRM* at ¶ 44.

provided to residential, single-line business, and mobile wireless customers.²⁰ However, evolving broadband technologies promise to make high bandwidth applications increasingly available to residential subscribers. In addition, the Commission itself has recognized that new products are beginning to emerge that require high bandwidth capability, such as high definition video.²¹ As currently proposed, the Commission's multi-line business category is a catchall for a broad spectrum of services, from traditional business to special access services and potentially including new broadband technologies such as digital subscriber line (DSL) access services. The complexities of dealing with capacity-based or bandwidth-based assessment mechanisms may far exceed the problems the Commission has identified with a revenue-based assessment mechanism. The challenge of maintaining such a capacity-based system as technologies and services evolve is very problematic at best.

Finally, the Commission notes that it is seeking comment in a separate proceeding on whether other facilities-based broadband Internet access providers, such as cable, wireless, and satellite, should be required to contribute to universal service.²² However, the Commission offers no proposal as to how these differing technology platforms could be accommodated under a connection-based proposal, should the Commission take action

²⁰ See *FNPRM* at ¶ 50.

²¹ See *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, CC Docket No. 98-146, *Third Report*, 17 FCC Rcd 2844 (2002) at ¶ 10.

²² See *FNPRM* at ¶4 discussing issues for comment in *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Universal Service Obligation of Broadband Providers*, CC Docket No. 02-33, *Notice of Proposed Rulemaking*, 17 FCC Rcd 3019 (2002) (*Wireline Broadband NPRM*).

to expand the base of universal service contributors. Such information needs to be factored into the assessment of the administrative complexity of a proposal. Before determining that a replacement mechanism is administratively workable and not overly burdensome, the Commission needs to ensure that any proposed assessment mechanism can equitably handle both evolving technologies and alternative technology platforms.

Such key issues deserve detailed explanation and careful consideration prior to any Commission action to change the universal service contribution mechanism. The Commission needs to ensure that any new mechanism can handle both alternative technology platforms and evolving technologies.

III. CONCLUSION

The Commission should thoroughly explore “fixes” to the current revenue-based system before discarding a program that has worked well. The Commission also needs to consider the potential impact of the proposed shift in contribution assessment mechanism on carriers and their customers, as well as the significant legal risks and practical complications associated with the proposed connection-based mechanism.

In the event that the Commission decides to replacement of the current mechanism is necessary, it should ensure that any new assessment mechanism is

administratively workable, does not burden end users, and complies with section 254(d) of the Act.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: /s/ Richard A. Askoff
Richard A. Askoff
Its Attorney

Martha West
Senior Regulatory Manager

April 22, 2002

80 South Jefferson Road
Whippany, New Jersey 07981
(973) 884-8000

Certificate of Service

I hereby certify that a copy of the Comments was served this 22nd day of April 2002, by electronic delivery to the persons listed below.

By: /s/ Shawn O'Brien
Shawn O'Brien

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.,
TW-A325
Washington, D.C. 20554
(filed through ECFS)